

NOTICE

*Memorandum decisions of this court do not create legal precedent. See Alaska Appellate Rule 214(d) and Paragraph 7 of the Guidelines for Publication of Court of Appeals Decisions (Court of Appeals Order No. 3). Accordingly, this memorandum decision may not be cited as binding precedent for any proposition of law.*

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

MICHAEL S. LINEKER,	)	
	)	
Appellant,	)	Court of Appeals No. A-8957
	)	Trial Court No. 1KE-03-00719 CR
v.	)	
	)	
STATE OF ALASKA,	)	
	)	
Appellee.	)	
_____	)	
MARIA L. LINEKER,	)	
	)	
Appellant,	)	Court of Appeals No. A-8967
	)	Trial Court No. 1KE-03-00720 CR
v.	)	
	)	<u>MEMORANDUM OPINION</u>
STATE OF ALASKA,	)	
	)	<u>AND JUDGMENT</u>
Appellee.	)	
_____	)	No. 5558 — January 20, 2010

Appeal from the Superior Court, First Judicial District,  
Ketchikan, Larry R. Weeks, Judge.

Appearances: David K. Allen, Assistant Public Advocate,  
Fairbanks, and Joshua Fink, Public Advocate, Anchorage, for the  
Appellant Michael S. Lineker. Tracey Wollenberg, Assistant  
Public Defender, and Quinlan Steiner, Public Defender,  
Anchorage, for the Appellant Maria L. Lineker. Nancy R. Simel,  
Assistant Attorney General, Office of Special Prosecutions and  
Appeals, Anchorage, and Talis J. Colberg, Attorney General,  
Juneau, for the Appellee.

Before: Coats, Chief Judge, and Mannheimer and Bolger,  
Judges.

COATS, Chief Judge.  
BOLGER, Judge, concurring.  
MANNHEIMER, Judge, dissenting.

Michael S. Lineker and his wife, Maria L. Lineker, were arrested after the police discovered fifty marijuana plants on their property. The plants had an aggregate weight of approximately 3.8 pounds. During their search of the Lineker home, the police did not find any paraphernalia indicative of smoking or selling marijuana. The State charged the Linekers with three counts of misconduct involving a controlled substance in the fourth degree<sup>1</sup> for possession of marijuana.

The Linekers moved to dismiss the indictment. They claimed that their possession of marijuana was protected under the state and federal right to privacy and free exercise of religion. Superior Court Judge Larry R. Weeks initially denied the motion on the ground that the State had a compelling interest in enforcing the laws that prohibited possession of marijuana. The Linekers entered a *Cooksey* plea, preserving their right to challenge the trial court's denial of their motion.<sup>2</sup>

On appeal, we concluded that "Judge Weeks's general reliance on the State's interest in enforcing its drug laws was insufficient to demonstrate that the State's interest was compelling enough to override the Linekers' rights under the free exercise clause."<sup>3</sup> We remanded the case to the superior court to allow the Linekers "to establish that their

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<sup>1</sup> AS 11.71.040(a)(3)(F), (a)(3)(G), & (a)(5).

<sup>2</sup> *Cooksey v. State*, 524 P.2d 1251, 1255-57 (Alaska 1974).

<sup>3</sup> *Lineker v. State*, Alaska App. Memorandum Opinion and Judgment No. 5119 at 4 (Oct. 4, 2006), 2006 WL 2847849 at \*2.

conduct was based on a sincere religious belief.”<sup>4</sup> Following a hearing at which the Linekers testified, Judge Weeks found that “there is no religion in the Lineker[s’] professed belief system and that those beliefs are not sincere religious beliefs ... .” The Linekers appeal.

At the evidentiary hearing, Michael Lineker testified that he belonged to a religion called “United Global Mankind Divine Maintenance and Direction,” whose main tenet is the “fatherhood of God and the brotherhood of man.” He testified that his religion generally required a person to abstain from alcohol and drugs. He further testified to a progression of dietary restrictions, including fasting one day for each year of one’s life.

He also testified that his religion involved the practice of cleansing and anointment by liquid extracted from marijuana plants. He described how the plants had to be grown in a very specific way and how he would use a hand juicer to extract the liquid from the plants. The liquid was mixed in a one-to-one ratio with oil. He stated that approximately one gallon of liquid was the ideal amount for anointment. He described a religious ceremony where he would cover himself in the liquid repeatedly until it was all absorbed. Maria Lineker offered similar testimony. She testified that she had undergone anointment only once. She described the anointment as spiritually fulfilling but also “a little messy.”

During his testimony, Michael Lineker conceded that about one month after he was arrested on the marijuana charges, he obtained certificates which indicated that he was an ordained minister with the Universal Life Church and a member of the Hawaii Cannabis (THC) Ministry. He admitted that the website for the Hawaii Cannabis (THC) Ministry provided information designed to provide a legal defense to people who were caught with marijuana. He admitted that by submitting documentation of these

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<sup>4</sup> *Id.* at 7, 2006 WL 2847849 at \*3.

ordinations, he was misleading the court about his religious affiliations. The record shows that, as part of their first motion to dismiss the indictment, both Michael and Maria Lineker submitted affidavits claiming to be ordained ministers with the Universal Life Church and with the Hawaii Cannabis (THC) Ministry.

Religious freedom is protected by the First Amendment of the United States Constitution and article I, section 4 of the Alaska Constitution.<sup>5</sup> In *Employment Division, Department of Human Resources of Oregon v. Smith*,<sup>6</sup> the United States Supreme Court held that “generally applicable, religion-neutral laws that have the effect of burdening a particular religious practice need not be justified by a compelling governmental interest.”<sup>7</sup> Although Congress effectively overruled the United States Supreme Court’s decision in *Smith* by passing the Religious Freedom Restoration Act,<sup>8</sup> this act does not apply to the states.<sup>9</sup> Therefore, the Linekers’ claim rests solely on article I, section 4 of the Alaska Constitution.<sup>10</sup>

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<sup>5</sup> See U.S. Const. amend. I (“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”); Alaska Const. art. I, § 4 (“No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof.”).

<sup>6</sup> 494 U.S. 872, 110 S. Ct. 1595, 108 L. Ed. 2d 876 (1990).

<sup>7</sup> *Id.* at 885-86 & n.3, 110 S. Ct. at 1604 & n.3.

<sup>8</sup> 42 U.S.C.A. § 2000bb-1 (reinstating the compelling interest test with respect to laws that “substantially burden” sincere religious practices).

<sup>9</sup> *City of Boerne v. Flores*, 521 U.S. 507, 536, 117 S. Ct. 2157, 2172, 138 L. Ed. 2d 624 (1997).

<sup>10</sup> *Cf. Huffman v. State*, 204 P.3d 339, 344 (Alaska 2009) (rejecting a First Amendment challenge to a provision of the Alaska Administrative Code requiring tuberculosis skin tests for school children).

*Frank v. State*<sup>11</sup> sets out the test for determining whether conduct is protected by the free exercise clause of the Alaska Constitution.<sup>12</sup> *Frank* provides that “[t]he free exercise clause may be invoked only where there is a religion involved, only where the conduct in question is religiously based, and only where the claimant is sincere.”<sup>13</sup>

Whether a religious belief is sincere is a question of fact.<sup>14</sup> Judge Weeks was able to observe the Linekers when they testified, so he was obviously in a much better position than we are to determine their sincerity.<sup>15</sup> As with most factual matters, we defer to the trial court and will reverse the trial court’s findings only if they are clearly erroneous.<sup>16</sup> After hearing the testimony, Judge Weeks concluded that “the Linekers contrived this set of beliefs in order to have access to an illegal drug.” He concluded that Michael Lineker’s “speech and manner under oath left the court with a firm conviction that as he was testifying he was making it up as he went along.”

Judge Weeks’s conclusion is supported by the evidence. The strongest evidence in support of Judge Weeks’s conclusion is Michael Lineker’s admission that, one month after he was arrested on the marijuana charges, he obtained certificates stating that he was a minister in the Universal Life Church and the Hawaii Cannabis (THC) Ministry in order to mislead the court about his religious beliefs and in an attempt to

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<sup>11</sup> 604 P.2d 1068 (Alaska 1979).

<sup>12</sup> See also *Huffman*, 204 P.3d at 344.

<sup>13</sup> *Frank*, 604 P.2d at 1071 (citation omitted).

<sup>14</sup> See, e.g., *United States v. Meyers*, 95 F.3d 1475, 1482 (10th Cir. 1996) (applying the Religious Freedom Restoration Act).

<sup>15</sup> See *Troyer v. State*, 614 P.2d 313, 318 (Alaska 1980) (noting that the trial court’s findings on credibility are accorded special deference because the trial judge can observe the witness’s demeanor).

<sup>16</sup> *State v. Waterman*, 196 P.3d 1115, 1119 (Alaska App. 2008).

establish a defense to the marijuana charges. He submitted an affidavit in support of his claim that he was an ordained minister. The record shows that Maria Lineker submitted a similar affidavit.

Based on this evidence and the Linekers' testimony at the evidentiary hearing, Judge Weeks found that the Linekers had not established that their possession of marijuana was supported by a sincere religious belief. We conclude that this finding is not clearly erroneous.

The judgment of the superior court is AFFIRMED.

BOLGER, Judge, concurring.

I agree with Judge Coats’s lead opinion. I write separately to address the suggestions in Judge Mannheimer’s dissent that Judge Weeks relied on improper factors when he decided that the Linekers did not hold sincere religious beliefs.

This court’s remand order required the Linekers to establish the following three elements on remand: “that there is a religion involved, that the conduct in question is religiously based, and that the claimant is sincere in his or her religious beliefs.”<sup>1</sup> When Judge Weeks applied this test, he concluded that the Linekers’ beliefs were not sincere, but he also determined that the Linekers were not practicing a religion. This latter determination was supported by the discussion quoted in the dissenting opinion.

I believe that Judge Weeks’s discussion is consistent with the most recent analysis of this issue by the Alaska Supreme Court in *Huffman v. State*.<sup>2</sup> In *Huffman* the court noted:

The United States Supreme Court has emphasized that *a personal philosophy is not equivalent to a religion*. Subsequent United States Courts of Appeals cases have endeavored to provide a more concrete definition, focusing on how broad and fundamental an individual’s set of expressed beliefs are by considering factors such as whether the premises of the religion relate to ultimate questions and whether there are rituals or other activities associated with it.<sup>[3]</sup>

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<sup>1</sup> *Lineker v. State*, Alaska App. Memorandum Opinion and Judgment No. 5119 at 4 (Oct. 4, 2006), 2006 WL 2847849 at \*3.

<sup>2</sup> 204 P.3d 339 (Alaska 2009).

<sup>3</sup> *Id.* at 344-45 (emphasis added) (internal citations omitted).

In *Huffman*, the supreme court rejected a free exercise claim, concluding that the claimants did not “subscribe to any organized religion,” and that their personal feelings were not “connected to a comprehensive belief system, set of practices, or connection to ideas about fundamental matters.”<sup>4</sup>

The factors that the supreme court considered in the *Huffman* case are similar to the factors that Judge Weeks considered when he concluded that the Linekers’ conduct was not based on a religion. Accordingly, I would affirm Judge Weeks’s conclusion that the Linekers have not established that there was a religion involved in this case. However, I also agree with Judge Coats’s lead opinion, affirming Judge Weeks’s finding that the Linekers’ beliefs were not sincere.

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<sup>4</sup> *Id.* at 345.



MANNHEIMER, Judge, dissenting.

The Linekers are being prosecuted for growing approximately four dozen marijuana plants on their property.<sup>1</sup> They claim that they grew the plants, not to ingest the buds or leaves of the plants, but rather to harvest the oil so that this oil could be used in a religious ceremony.

Article I, Section 4 of the Alaska Constitution states that “[n]o law shall be made ... prohibiting the free exercise [of religion].” In *Frank v. State*, 604 P.2d 1068, 1071-74 (Alaska 1979), the Alaska Supreme Court held that, because of this provision of our constitution, an apparently religion-neutral law of general application (such as the laws prohibiting the possession and use of marijuana at issue in this appeal) can not be enforced against a person when (1) the person has a sincere religious belief that calls for the person to engage in the prohibited conduct and (2) the State is unable to furnish a compelling government interest to justify the prohibition.

In our first decision in this case, *Lineker v. State*, Alaska App. Memorandum Opinion No. 5119 (October 4, 2006) at 7, 2006 WL 2847849 at \*3, we directed the superior court to apply the *Frank* test to the facts of the Linekers’ case. The superior court concluded that the Linekers’ asserted religious beliefs were not sincere — that “the Linekers contrived this set of beliefs in order to have access to an illegal drug”.

As the majority opinion correctly points out, an appellate court normally defers to a lower court’s assessment of witness credibility when the lower court judge has personally observed the witnesses giving their testimony. But an appellate court must be particularly careful in matters dealing with the sincerity of a person’s religious

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<sup>1</sup> See AS 11.71.040(a)(3)(F), AS 11.71.040(a)(3)(G), and AS 11.71.040(a)(5).

belief. Specifically, if a lower court evaluates the sincerity of a person's religious beliefs by assessing whether the person's asserted beliefs comport with standard religious beliefs, the lower court commits an error of law — and thus an appellate court need not defer to the lower court's conclusion.

As our supreme court declared in *Frank*, “The determination of religious orthodoxy is not the business of a secular court.” 604 P.2d at 1073. More broadly, courts must be circumspect when determining whether a person's set of beliefs constitutes a “religion”. For example, as the Fifth Circuit noted in *Theriault v. Silber*, 547 F.2d 1279 (5th Cir. 1977), a definition of “religion” that requires proof of a belief in a supreme being is unconstitutionally narrow, because it would exclude “agnosticism and conscientious atheism ... from the [protection of] the Free Exercise and Establishment [clauses]”. *Id.* at 1281.

In the present case, the superior court's findings on remand focus in large measure on the apparent inconsistencies in the Linekers' testimony about their beliefs and the tenets of their asserted religion. Based on these inconsistencies — many of which apparently came to light during cross-examination — the superior court concluded that Mr. Lineker was “making it up as he went along”. This is the type of finding that an appellate court must defer to.

But the superior court's findings also contain several instances where, seemingly, the court assessed the *sincerity* of the Linekers' beliefs by the extent to which these beliefs were unorthodox. For example, in the same passage where the superior court declared that the Linekers had “conjured up” “an idiosyncratic belief system” “in order to allow them to experiment with [marijuana]”, the court repeatedly supported this assertion with observations as to the non-orthodox nature of the Linekers' beliefs:

The court finds that the defendants' marijuana growing operation was the result of an idiosyncratic belief system conjured up in order to allow them to experiment with the illegal drug. The credible evidence at the evidentiary hearing does not establish that the Linekers were practicing any institutional set of values or codification of ethics that involved methods of how to deal with the world. There is no credible recognition of some force or power beyond the personal that is themselves. Their God is themselves.

Later, toward the end of the superior court's findings, the court again refers to the non-orthodoxy of the Linekers' beliefs:

In Alaska[,] some people's spiritual solace may be to go into the wilderness and commune with nature. Smoking a little dope or absorbing it through the skin ... may or may not turn it into a more pleasurable experience. [But it] does not turn it into a religious experience.

. . .

Mr. Lineker has manufactured other unusual beliefs and [he] may at some point have convinced himself. His wife testifies to her belief in [the] validity [of these beliefs]. ... While this may be evidence of [Mr. Lineker's] ability to convince himself and his wife of unusual things[,] it does not mean that his current statements about his beliefs amount to a religion for him or her.

Given these passages from the superior court's findings, I believe there is a substantial possibility that the superior court improperly evaluated the sincerity of the Linekers' beliefs by comparing them (unfavorably) to standard religious beliefs. I would therefore vacate the superior court's findings and remand this case to the superior court

once again, so that the Linekers' sincerity (or lack of sincerity) can be assessed in a proper fashion.